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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* SELIM SHLOMO RAKIB

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Appeal 2009-008819  
Application 09/898,728  
Technology Center 2400

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Before THOMAS S. HAHN, ELENI MANTIS MERCADER, and  
BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the final rejection of claims 1-9. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

## INVENTION

Appellant's claimed invention is directed to a remote 30 in customer premises #1 which issues commands to request services from a headend 12, wherein the resulting digital data transmitted by the headend 12 to gateway 10 arrives on a particular logical channel (Fig. 1; Spec. 9).

Claims 1 and 3, reproduced below, are representative of the subject matter on appeal.

1. A system comprising:

- one or more transmission mediums for carrying at least upstream and downstream digital data traffic;

- a headend circuit coupled to all said transmission mediums and containing or coupled to one or more server computers and/or other circuits to provide at least digital data services to a plurality of customers;

- one or more local area networks and/or dedicated LAN segments or data paths at each customer premises;

- one or more peripheral devices at each customer premises coupled to said one or more local area networks and/or dedicated LAN segments or dedicated data paths, said one or more peripheral devices including a non-television component;

- a plurality of gateway means at customer premises locations and coupled to all said transmission mediums and coupled to said one or more local area networks, for receiving, demodulating and detecting digital data transmitted to one or more of said peripherals from said headend circuit and to packetize and route said data to the appropriate peripheral device via said one or more local area networks or one or more ports directly connected by dedicated lines or LAN segments to one or more peripherals, and for managing traffic and bandwidth and rate shaping if necessary to match the

data rate of data to be transmitted over a data path to the available bandwidth on that data path; and

a remote control means at one or more customer premises and, at each premises, coupled by wireless digital data communication circuitry to said gateway or to said gateway through a peripheral device, for issuing commands to said headend circuit through said gateway and one or more transmission mediums to provide data to said one or more peripherals through said one or more transmission mediums and said gateway.

3. A system comprising:

one or more transmission mediums for carrying at least upstream and downstream digital data traffic;

a headend circuit coupled to all said transmission mediums and containing or coupled to one or more server computers and/or other circuits to provide at least digital data services to a plurality of customers, and including rate shaping circuitry to alter the data rate of data transmitted on or received from said transmission mediums;

one or more local area networks or digital data buses at each customer premises;

one or more peripheral devices including at least one non-television component at each customer premises coupled to said one or more local area networks or buses;

at least one cable modem at each customer premises location, said cable modem coupled to all said transmission mediums and coupled to said one or more peripherals via said local area networks or buses; and

a remote control coupled to said headend through said cable modem or coupled to said headend through one or more of said peripherals coupled to said cable modem for issuing wireless commands that get routed by said cable modem to said headend to invoke services provided by said headend circuit.

## THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Huang	US 6,437,836 B1	Aug. 20, 2002
Ellis	US 2005/0028208 A1	Feb. 3, 2005

The following rejection is before us for review:

The Examiner rejected claims 1-9 under 35 U.S.C. § 103(a) as unpatentable over Ellis in view of Huang.

### ISSUES

The pivotal issues are whether:

1. the Examiner erred in finding that Ellis teaches “a remote control means *at one or more customer premises . . . coupled by wireless digital data communication circuitry to said gateway*” as recited in independent claim 1 (emphases added); and
2. the Examiner erred in finding that Ellis teaches “a remote control . . . for issuing wireless commands that get routed by said cable modem” as recited in claim 3.

### ANALYSIS

#### *Claims 1, 2, and 5-9*

Appellant argues (App. Br. 19) that Ellis fails to disclose “a remote control means *at one or more customer premises . . . coupled by wireless digital data communication circuitry to said gateway*” as recited in independent claim 1 (emphases added). Appellant in particular argues that Ellis’s remote control means (i.e., access device 24) is not located at the customer premises, but rather at a remote location (i.e., at work) (citing Ellis’s ¶ [0099]) which is remote from the customer premises (App. Br. 18-19).

We agree. The Examiner failed to address (Ans. 15-16) how the remote program guide access device 24, which the Examiner identified in

the Final Rejection to be the remote control means (Ans. 5), was interpreted to be located at the customer premises. Instead, the Examiner, in the Answer, changes the interpretation of the remote control means to control 40 without any showing that such a remote control issues commands to the headend circuit through the gateway as required by claim 1 (*see also* Reply Br. 2).

Accordingly, we will reverse the Examiner's rejection of claim 1 and the rejection of independent claims 5, 6, and 8, which recite similar limitations, as well as the rejection of dependent claims 2, 7, and 9.

*Claims 3 and 4*

At the outset, we note that independent claim 3 does not recite a remote control at the customer premises as recited in independent claims 1, 5, 6, and 8. Appellant argues (App. Br. 20), with respect to claim 3, that according to Ellis's Figure 2a, there is no need to route commands to the headend in order to achieve synchronization.

The Examiner responded (Ans. 17) that Ellis teaches (Fig. 14, step (1205)) the exchange of one or more commands. The Examiner explained that this is done to establish a remote access link between the remote access interactive television program guide and the local interactive program guide (Ans. 17). Appellant has not responded to the Examiner's finding.

We find the Examiner's finding reasonable. Accordingly, we will affirm the Examiner's rejection of claim 3 and its dependent claim 4.

### CONCLUSIONS

1. The Examiner erred in finding that Ellis teaches “a remote control means *at one or more customer premises . . . coupled by wireless digital data communication circuitry to said gateway*” as recited in independent claim 1 (emphases added).
2. The Examiner did not err in finding that Ellis teaches “a remote control . . . for issuing wireless commands that get routed by said cable modem” as recited in claim 3.

### ORDER

The decision of the Examiner to reject claims 1, 2, and 5-9 is reversed. The decision of the Examiner to reject claims 3 and 4 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

### AFFIRMED-IN-PART

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